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SINHDARELLA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JCS

07 04353

SINHDARELLA, INC., a California
corporation,

Plaintiff,

v.

KEVIN VU, an individual, d/b/a/
THE BOILING CRAB; and DOES 1
through 10,

Defendants.

CASE NO.

COMPLAINT FOR:

- (1) INFRINGEMENT OF A
FEDERALLY REGISTERED
TRADEMARK;**
 - (2) TRADEMARK AND TRADE
DRESS INFRINGEMENT, AND
UNFAIR COMPETITION;**
 - (3) STATE LAW UNFAIR
COMPETITION;**
 - (4) COMMON LAW TRADEMARK
INFRINGEMENT; AND**
 - (5) CONSTRUCTIVE TRUST.**
- [DEMAND FOR JURY TRIAL]**

1 Plaintiff Sinhdarella, Inc. ("Sinhdarella" or "Plaintiff"), for its
2 complaint against defendant Kevin Vu d/b/a/ THE BOILING CRAB
3 ("Defendant") and Does 1 to 10, inclusive, alleges as follows:

4 JURISDICTION

5 1. The United States District Court for the Northern District of
6 California has subject matter jurisdiction over this action under 28 U.S.C. § 1331
7 (federal question jurisdiction), 28 U.S.C. § 1338(a) (jurisdiction over trademark
8 actions), 28 U.S.C. § 1338(b) (unfair competition claim joined with a substantial
9 and related claim under the trademark laws), and 15 U.S.C. § 1121(a) because this
10 action arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.* The Court also has
11 supplemental jurisdiction over the claims arising out of state law pursuant to 28
12 U.S.C. §§ 1338(b) and 1367 because the state law claims arise out of the same
13 operative facts as the federal claims. This Court has personal jurisdiction over
14 Defendant because Defendant resides in this district and jurisdiction. Personal
15 jurisdiction is also proper over Defendant because Defendant sells and offers for
16 sale goods and services, and otherwise conducts business, in California, including
17 in this judicial district.

18 VENUE

19 2. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b)
20 because, among other reasons, Defendant transacts business within this district and
21 offers for sale in this district goods and services in a manner that infringes
22 Sinhdarella's trademark and trade dress rights. In addition, Sinhdarella has
23 suffered harm in this district and a substantial part of the events or omissions
24 giving rise to the claims asserted herein occurred in this district.

25 INTRADISTRICT ASSIGNMENT

26 3. Because this is an "Intellectual Property Action" for purposes
27 of Local Rule 3-2(c), that rule provides that this action shall be assigned on a
28 district-wide basis.

PARTIES

4. Sinhdarella, Inc. is a corporation organized and existing under the laws of the State of California, with its principal headquarters located in Fountain Valley, California. Sinhdarella operates a chain of restaurants throughout the United States under the trademark THE BOILING CRAB®, which Sinhdarella has used since at least as early as 2003, and offers restaurant services and related products and services under the trademark THE BOILING CRAB®.

5. On information and belief, defendant Kevin Vu d/b/a/ THE BOILING CRAB is an individual who resides in San Jose, California. Defendant recently opened and began operating a restaurant that is virtually identical in all material respects to Sinhdarella's THE BOILING CRAB® restaurants, including by virtue of Defendant's unauthorized use of Sinhdarella's THE BOILING CRAB® trademark as the name of Defendant's restaurant. A true and correct copy of Defendant's Fictitious Business Name Statement filed with the Santa Clara County Clerk – Recorder's Office is attached hereto as Exhibit A.

6. Plaintiff is unaware of the true names and capacities of the defendants sued herein as Does 1 through 10, inclusive, and therefore sues those additional defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.

7. Upon information and belief, Plaintiff alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as herein alleged were proximately caused by their conduct.

FACTS COMMON TO ALL CLAIMS

SINHDARELLA'S *THE BOILING CRAB*® CHAIN OF RESTAURANTS

8. In 2003, Sinhdarella opened its first restaurant under the trademark THE BOILING CRAB®, in California. A true and correct copy of a

1 picture of Sinhdarella's first THE BOILING CRAB® restaurant is attached hereto
2 as Exhibit B.

3 9. Based on the huge popularity and success of Sinhdarella's THE
4 BOILING CRAB® restaurants, Sinhdarella has since expanded its chain of THE
5 BOILING CRAB® restaurants to include locations throughout the United States,
6 including three THE BOILING CRAB® restaurants in California and a THE
7 BOILING CRAB® restaurant in Houston, Texas. Sinhdarella is also actively
8 exploring further expansion of its chain of THE BOILING CRAB® restaurants to
9 additional locations throughout the United States.

10 10. Sinhdarella's THE BOILING CRAB® restaurants offer a
11 unique selection of Louisiana-style seafood, including blue crab, oysters,
12 Dungeness crab, shrimp, and crawfish seasoned with THE BOILING CRAB®
13 restaurants' distinctive blends of spices and seasonings. Customers of THE
14 BOILING CRAB® restaurants are also treated to a singularly enjoyable dining
15 experience that is characterized by the innovative food presentations, distinctive
16 restaurant décor, unique menus, and one-of-a-kind dining experience pioneered
17 and provided by Sinhdarella's THE BOILING CRAB® restaurants. A true and
18 correct copy of a picture of the inside of one of Sinhdarella's THE BOILING
19 CRAB® restaurants is attached hereto as Exhibit C. Further contributing to
20 Sinhdarella's distinctive appearance and appeal, Sinhdarella's unique menus use a
21 distinctive format, contain unique content, and are distinctively printed on eye-
22 catching colored paper, such as blue, hot pink, yellow, green, or orange colored
23 paper. A true and correct copy of THE BOILING CRAB® restaurants' unique
24 orange menu used around the time that Defendant began using Sinhdarella's THE
25 BOILING CRAB® trademark and distinctive trade dress without authorization is
26 attached hereto as Exhibit D.

27 11. THE BOILING CRAB® chain of restaurants has become
28 extremely well known and respected among consumers, who have come to

1 associate Sinhdarella's THE BOILING CRAB® trademark with Sinhdarella's
2 THE BOILING CRAB® restaurants and the one-of-a-kind dining experience that
3 Sinhdarella pioneered and provides. Sinhdarella's THE BOILING CRAB®
4 restaurants have also received unsolicited attention from, and positive recognition
5 by, the media, which has further contributed to consumers' widespread recognition
6 of Sinhdarella's THE BOILING CRAB® restaurants.

7 12. Additionally, Sinhdarella has expended considerable time,
8 effort, and money promoting and advertising its chain of THE BOILING CRAB®
9 restaurants, further contributing to the recognition and success of THE BOILING
10 CRAB® chain of restaurants. Today, Sinhdarella continues to promote and
11 advertise its THE BOILING CRAB® restaurants. A true and correct copy of one
12 of Sinhdarella's paid advertisements for its THE BOILING CRAB® restaurants is
13 attached hereto as Exhibit E.

14 13. Sinhdarella has also used the trademark THE BOILING
15 CRAB® extensively on the internet and, as a result, Sinhdarella's THE BOILING
16 CRAB® trademark has developed a strong internet presence and recognition by
17 consumers who use the internet. Sinhdarella is the registrant of various domain
18 names incorporating, in whole or in part, THE BOILING CRAB® trademark,
19 including theboilingcrab.com and boilingcrab.com. Sinhdarella owns and operates
20 a website at these domain names in order to promote, and provide consumers with
21 information concerning, Sinhdarella's nationwide chain of THE BOILING
22 CRAB® restaurants. Sinhdarella's website makes extensive use of THE
23 BOILING CRAB® trademark and embodies part of the unique look-and-feel of
24 THE BOILING CRAB® dining experience. A true and correct copy of the home
25 page of Sinhdarella's website at www.theboilingcrab.com is attached hereto as
26 Exhibit F.

27 14. In addition to owning and operating a THE BOILING CRAB®
28 website at www.theboilingcrab.com, Sinhdarella also uses its trademark THE

1 BOILING CRAB® extensively on the internet through the popular social
2 networking site, myspace.com. In particular, Sinh darella operates a web page at
3 www.myspace.com/theboilingcrab in order to further promote its THE BOILING
4 CRAB® trademark and to provide information about and promote its chain of THE
5 BOILING CRAB® restaurants. A true and correct copy of the page maintained by
6 Sinh darella at www.myspace.com/theboilingcrab is attached hereto as Exhibit G.

7 15. Through Sinh darella's extensive use, marketing, branding, and
8 promotion of its THE BOILING CRAB® trademark and THE BOILING CRAB®
9 chain of restaurants, its trademark THE BOILING CRAB® is recognized by
10 consumers throughout the United States and around the world, enjoying substantial
11 recognition, goodwill, and association with THE BOILING CRAB® restaurant
12 chain. The public distinguishes Sinh darella's goods and services from those of
13 others who offer the same or similar goods and services on the basis of its
14 trademark THE BOILING CRAB®. Sinh darella's THE BOILING CRAB®
15 trademark has acquired secondary meaning throughout the United States, including
16 California.

17 **SINH DARELLA'S FEDERAL REGISTRATION OF ITS**
18 ***THE BOILING CRAB®* TRADEMARK**

19 16. Sinh darella is the owner of United States Trademark
20 Registration Number 3,256,219 for the mark THE BOILING CRAB® in
21 connection with restaurant services in International Class 43. A true and correct
22 copy of Sinh darella's federal trademark registration for THE BOILING CRAB®
23 trademark is attached hereto as Exhibit H.

24 17. Sinh darella's federal registration of its THE BOILING CRAB®
25 trademark constitutes *prima facie* evidence that the mark is valid and that
26 Sinh darella is entitled to exclusive use of the mark THE BOILING CRAB® in
27 commerce throughout the United States for restaurant services and in connection
28 with goods and services related thereto.

DEFENDANT'S INFRINGEMENT OF SINHDARELLA'S *THE BOILING CRAB*® TRADEMARK AND TRADE DRESS

18. Recently, several years after Sinhdarella first began using its THE BOILING CRAB® trademark and distinctive trade dress, Defendant opened and began operating a restaurant that imitates in all material respects the name and distinctive trade dress of Sinhdarella's THE BOILING CRAB® restaurant chain. Most blatantly, in a clear effort to confuse consumers into thinking that Defendant is somehow associated or affiliated with Sinhdarella's THE BOILING CRAB® nationwide chain of restaurants, Defendant precisely imitates Sinhdarella's THE BOILING CRAB® trademark by calling Defendants' restaurant "The Boiling Crab," even though Defendant does not have any affiliation with, or authorization from, Sinhdarella. A true and correct copy of a picture of Defendant's infringing restaurant and unauthorized use of Sinhdarella's THE BOILING CRAB® trademark is attached hereto as Exhibit I.

19. Defendant's blatant imitation of Sinhdarella's THE BOILING CRAB® restaurants did not stop with unauthorized use of Sinhdarella's THE BOILING CRAB® trademark as the name of Defendant's restaurant. Rather, Defendant has also blatantly copied the unique trade dress used by Sinhdarella's THE BOILING CRAB® restaurants in a further effort to confuse consumers into thinking Defendant is somehow associated or affiliated with Sinhdarella's THE BOILING CRAB® nationwide chain of restaurants. Defendant's menu, a true and correct copy of which is attached hereto as Exhibit J, is virtually an identical copy of the menu used by Sinhdarella around the time that Defendant opened its restaurant, a true and correct copy of which is attached hereto as Exhibit D. As can be seen by comparing Exhibit D with Exhibit J, Defendant's menu is the exact same shape (rectangular), size (4.25"x11"), and color (orange) as the menu for Sinhdarella's THE BOILING CRAB® restaurants used around the time that Defendant opened his infringing restaurant. Additionally, Defendant's menu offers

1 the same five entrees (crab, oysters (raw), crab, crawfish, and shrimp), two of the
 2 same extras in the same order (corn and sausage), and the same drinks in the same
 3 order (soda, bottled water, domestic beer, and imported beer) as does Sinhdarella's
 4 THE BOILING CRAB® menu. *Compare Exhibit D with Exhibit J.* In fact,
 5 Defendant's imitation of Sinhdarella's THE BOILING CRAB® restaurants is so
 6 complete that Defendant even copied precisely the same hours of operation as
 7 those used by Sinhdarella's THE BOILING CRAB® restaurants: Mon-Fri 3:00
 8 pm-10:00 pm and Sat-Sun 12:00 pm-10:00 pm! *Compare Exhibit D with Exhibit*
 9 *J.*

10 20. As can be seen by comparing the interior of Defendant's
 11 restaurant, a true and correct copy of a picture of which is attached hereto as
 12 Exhibit K, with a copy of the interior of a genuine Sinhdarella THE BOILING
 13 CRAB® restaurant, a true and correct copy of a picture of which is attached hereto
 14 as Exhibit L, Defendant's restaurant also imitates the unique trade dress of
 15 Sinhdarella's THE BOILING CRAB® restaurants. For example, Defendant's
 16 restaurant copies the overall, non-functional configuration of Sinhdarella's THE
 17 BOILING CRAB® restaurants, including, but not limited to, by imitating the color
 18 of the walls, the signs on the walls, the hanging of fishing nets on the walls,
 19 affixing sculptures of red-colored crustaceans on the walls, the configuration of the
 20 tables and chairs, Sinhdarella's menus, and the overall look-and-feel of the
 21 restaurant. *Compare Exhibit K with Exhibit L.*

22 21. Sinhdarella is informed and believes, and based thereon alleges,
 23 that at the time Defendant opened and began operating his restaurant under the
 24 name "The Boiling Crab" and imitating Sinhdarella's distinctive THE BOILING
 25 CRAB® trade dress, Defendant knew of Sinhdarella's superior rights in the
 26 trademark THE BOILING CRAB® and in Sinhdarella's distinctive trade dress,
 27 and knew or should have known that Defendant's unauthorized use of
 28 Sinhdarella's THE BOILING CRAB® trademark and trade dress constitutes a

1 violation of Sinhdarella's rights in the trademark THE BOILING CRAB® and in
 2 Sinhdarella's distinctive THE BOILING CRAB® trade dress. Defendant's
 3 infringement of Sinhdarella's trademark and trade dress rights is intentional and
 4 willful.

5 22. Defendant's use of the trademark THE BOILING CRAB® for
 6 restaurant services and his willful and intentional infringement of Sinhdarella's
 7 distinctive trade dress is likely to cause confusion, mistake, and deception of
 8 consumers as to the source, quality, and nature of Defendant's services and goods,
 9 including Defendant's services and goods offered under or in connection with the
 10 trademark THE BOILING CRAB®, thereby proximately causing injury to
 11 Sinhdarella and its trademark rights.

12 23. Not surprisingly, Defendant's imitation of Sinhdarella's THE
 13 BOILING CRAB® restaurants through unauthorized use of THE BOILING
 14 CRAB® trademark and Sinhdarella's distinctive trade dress has caused actual
 15 confusion among consumers. In part because of the sub-par quality of Defendant's
 16 food and service, the confusion caused by Defendant's willful infringement of
 17 Sinhdarella's THE BOILING CRAB® trademark and trade dress has caused
 18 significant injury to the reputation of Sinhdarella's THE BOILING CRAB® chain
 19 of restaurants, including by virtue of negative reviews written about Defendant's
 20 infringing restaurant. Sinhdarella has also suffered additional significant injury as
 21 a result of Defendant's willful and intentional infringement of Sinhdarella's THE
 22 BOILING CRAB® trademark and trade dress, including as the result of lost
 23 business opportunities.

24 **DEFENDANT HAS IGNORED SINHDARELLA'S DEMANDS**
 25 **THAT DEFENDANT STOP INFRINGING SINHDARELLA'S**
 26 **THE BOILING CRAB® TRADEMARK**

27 24. On May 22, 2007, counsel for Sinhdarella sent a letter to
 28 Defendant objecting to Defendant's unauthorized use of Sinhdarella's THE

1 BOILING CRAB® trademark. That letter demanded, among other things, that
 2 Defendant immediately stop using the trademark THE BOILING CRAB®. A true
 3 and correct copy of that letter is attached hereto as Exhibit M.

4 25. On June 26, 2007, having not heard anything from Defendant in
 5 response to the initial letter, counsel for Sinhdarella sent another letter to
 6 Defendant, again objecting to Defendant's unauthorized use of Sinhdarella's THE
 7 BOILING CRAB® trademark and repeating the demands contained in the May 22,
 8 2007 letter. A true and correct copy of that letter is attached hereto as Exhibit N.

9 26. On July 23, 2007, still having not heard anything from
 10 Defendant in response to either of the first two letters, counsel for Sinhdarella sent
 11 another letter to Defendant – this time by hand delivery directly to Defendant's
 12 restaurant – again objecting to Defendant's unauthorized use of Sinhdarella's THE
 13 BOILING CRAB® trademark and once again repeating the demands contained in
 14 Sinhdarella's May 22, 2007 letter. A true and correct copy of that letter is attached
 15 hereto as Exhibit O.

16 27. Despite Sinhdarella's repeated demands that Defendant stop his
 17 blatant infringement of Sinhdarella's THE BOILING CRAB® trademark and trade
 18 dress, Defendant has completely ignored Sinhdarella's efforts to reach an informal
 19 resolution of this matter and continued, unabashedly, with his willful and
 20 intentional infringement of Sinhdarella's THE BOILING CRAB® trademark and
 21 trade dress rights.

FIRST CLAIM FOR RELIEF

(Infringement of a Federally Registered Trademark)

15 U.S.C. § 1114(1)

25 28. Sinhdarella realleges and incorporates by reference the
 26 allegations in paragraphs 1 through 27, as if set forth fully herein.

27 29. This claim is against Defendant for trademark infringement in
 28 violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

1 30. Defendant has used and is using in interstate commerce
2 Sinhdarella's valid and federally registered THE BOILING CRAB® trademark in
3 connection with restaurant services in such a way as is likely to cause confusion, to
4 cause mistake, and/or to deceive the consuming public.

5 31. Sinhdarella never consented to or authorized Defendant's
6 adoption or commercial use of the trademark THE BOILING CRAB® for any
7 purpose. Defendant therefore has infringed and is infringing Sinhdarella's THE
8 BOILING CRAB® trademark in violation of Section 32(1)(a) of the Lanham Act,
9 15 U.S.C. § 1114(1)(a).

10 32. Upon information and belief, Sinhdarella alleges that, at all
11 times relevant to this action, including when Defendant first adopted the mark THE
12 BOILING CRAB® and commenced commercial use of the mark THE BOILING
13 CRAB® in connection with restaurant services, Defendant knew of Sinhdarella's
14 prior adoption and widespread commercial use of the trademark THE BOILING
15 CRAB® in connection with restaurant services and related goods and services and
16 knew of the valuable goodwill and reputation acquired by Sinhdarella in
17 connection with its THE BOILING CRAB® trademark. Defendant's infringement
18 of Sinhdarella's THE BOILING CRAB® trademark is willful and deliberate.

19 33. Sinhdarella has no control over the quality of Defendant's
20 infringing restaurant services, and because of the source confusion engendered by
21 Defendant's willful trademark infringement, Sinhdarella's valuable goodwill in
22 and to its federally registered trademark THE BOILING CRAB® is being
23 significantly harmed. Defendant's use of the mark THE BOILING CRAB®, in
24 blatant imitation of Sinhdarella's THE BOILING CRAB® trademark, has caused
25 confusion, mistake, and deception to purchasers as to the source and origin of
26 Defendant's services and products sold under the mark THE BOILING CRAB®.

27 34. Defendant's activities are intended, and are likely, to lead the
28 public to conclude, incorrectly, that Defendant's restaurant services originate with,

1 are sponsored by, and/or are authorized by Sinh darella and its THE BOILING
2 CRAB® brand, to the damage and harm of Sinh darella and the consuming public.
3 Defendant's activities constitute willful and deliberate infringement of
4 Sinh darella's federally registered trademark in violation of the Lanham Act,
5 including, but not limited to, 15 U.S.C. § 1114(1). Accordingly, Sinh darella is
6 entitled to recover Defendant's profits, together with Sinh darella's damages,
7 increased monetary recoveries as provided by the Lanham Act, as well as costs of
8 the action and reasonable attorneys' fees pursuant to Section 35(a) of the Lanham
9 Act, 15 U.S.C. § 1117(a).

10 35. Defendant's activities have caused and will continue to cause
11 irreparable harm to Sinh darella for which Sinh darella has no adequate remedy at
12 law, in that: (i) Sinh darella's THE BOILING CRAB® trademark is a unique and
13 valuable property right that has no readily determinable market value; (ii)
14 Defendant's infringement constitutes an interference with Sinh darella's goodwill
15 and customer relationships and will substantially harm Sinh darella's reputation as
16 a source of high quality goods and services, as well as dilute the substantial value
17 of Sinh darella's THE BOILING CRAB® name and trademark; and (iii)
18 Defendant's wrongful conduct, and the resulting damages to Sinh darella, are
19 continuing. Accordingly, Sinh darella is entitled to preliminary and permanent
20 injunctive relief pursuant to 15 U.S.C. § 1116(a) and to an order under 15 U.S.C. §
21 1118 impounding all goods and other materials in Defendant's possession,
22 custody, or control that bear the trademark THE BOILING CRAB®.

23 36. Sinh darella also is entitled to, in addition to the other remedies
24 described herein, the cost of corrective advertising and a reasonable royalty as a
25 result of Defendant's infringement of Sinh darella's federally registered THE
26 BOILING CRAB® trademark.

27 37. This is an exceptional case, further entitling Sinh darella to
28 additional remedies and also entitling Sinh darella to recover its attorneys' fees and

1 costs incurred in prosecuting this action and stopping Defendant's willful
2 trademark infringement, pursuant to 15 U.S.C. § 1117.

3 **SECOND CLAIM FOR RELIEF**

4 **(Trademark and Trade Dress Infringement, and Unfair Competition)**

5 **15 U.S.C. § 1125(a)**

6 38. Sinhdarella realleges and incorporates by reference the
7 allegations in paragraphs 1 through 37, as if set forth fully herein.

8 39. This claim is against Defendant for trademark and trade dress
9 infringement, and unfair competition, in violation of Section 43(a) of the Lanham
10 Act, 15 U.S.C. § 1125(a).

11 40. Sinhdarella's THE BOILING CRAB® trademark and
12 distinctive trade dress, including the overall, non-functional configuration of
13 Sinhdarella's THE BOILING CRAB® restaurants, including, but not limited to,
14 the menus, food items, color of the walls, the signs on the walls, the hanging of
15 fishing nets on the walls, affixing sculptures of red-colored crustaceans on the
16 walls, the configuration of the tables and chairs, and the overall look-and-feel of
17 the restaurant, all as described above, are nonfunctional and inherently distinctive.
18 They have acquired secondary meaning in the eyes of the public.

19 41. Defendant's use and imitation of the trademark THE BOILING
20 CRAB® and the inherent trade dress of Sinhdarella's THE BOILING CRAB®
21 restaurants is so similar to Sinhdarella's THE BOILING CRAB® mark and trade
22 dress that Defendant is likely to cause confusion, mistake, and/or to deceive the
23 consuming public as to the affiliation, connection, and/or association between
24 Sinhdarella's THE BOILING CRAB® restaurants and Defendant's "The Boiling
25 Crab" restaurant. Defendant's unauthorized use of the trademark THE BOILING
26 CRAB® and Sinhdarella's trade dress infringes Sinhdarella's THE BOILING
27 CRAB® trademark and trade dress, and constitutes unfair competition.

28

1 Defendant's unauthorized use of the trademark THE BOILING CRAB® also
2 constitutes a false designation of origin of products and services.

3 42. On information and belief, at all times relevant to this action,
4 including at the time Defendant first copied and began using without authorization
5 Sinhdarella's THE BOILING CRAB® trademark and distinctive trade dress,
6 Defendant knew of Sinhdarella's prior adoption and widespread commercial use of
7 the trademark THE BOILING CRAB® and distinctive trade dress, and knew of the
8 valuable goodwill and reputation acquired by Sinhdarella in connection with its
9 THE BOILING CRAB® trademark and trade dress. Defendant's infringement of
10 Sinhdarella's THE BOILING CRAB® trademark and trade dress is therefore
11 knowing, willful, and deliberate.

12 43. Defendant's activities are intended to, and are likely to, lead the
13 public to conclude, incorrectly, that Defendant's restaurant services originate with,
14 are sponsored by, and/or are authorized by Sinhdarella and its nationwide chain of
15 THE BOILING CRAB® restaurants, to the damage and harm of Sinhdarella and
16 the consuming public. Defendant's activities constitute willful and deliberate
17 infringement of Sinhdarella's THE BOILING CRAB® trademark and trade dress
18 in violation of the Lanham Act, including, but not limited to, 15 U.S.C. § 1125(a).
19 Accordingly, Sinhdarella is entitled to recover Defendant's profits together with
20 Sinhdarella's damages, an increased monetary recovery, as well as costs of the
21 action and reasonable attorneys' fees pursuant to Section 35(a) of the Lanham Act,
22 15 U.S.C. § 1117(a).

23 44. Defendant's activities have caused and will continue to cause
24 irreparable harm to Sinhdarella for which Sinhdarella has no adequate remedy at
25 law, in that: (i) Sinhdarella's rights in its THE BOILING CRAB® trademark and
26 trade dress are unique and valuable property rights which have no readily
27 determinable market value; (ii) Defendant's infringement constitutes an
28 interference with Sinhdarella's goodwill and customer relationships and will

1 substantially harm Sinh darella's reputation as a source of high quality goods and
 2 services, as well as harm the substantial value of Sinh darella's THE BOILING
 3 CRAB® trademark and trade dress; and (iii) Defendant's wrongful conduct, and
 4 the resulting damages to Sinh darella, are continuing. Accordingly, Sinh darella is
 5 entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. §
 6 1116(a) and to an order under 15 U.S.C. § 1118 impounding all goods and other
 7 materials in Defendant's possession, custody, or control that bear the trademark
 8 THE BOILING CRAB®.

9 45. Sinh darella also is entitled to, in addition to the other remedies
 10 described herein, the cost of corrective advertising and a reasonable royalty as a
 11 result of Defendant's infringement of Sinh darella's THE BOILING CRAB®
 12 trademark and trade dress.

13 46. This is an exceptional case, further entitling Sinh darella to
 14 additional remedies and also entitling Sinh darella to recover its attorneys' fees and
 15 costs incurred in prosecuting this action and stopping Defendant's willful
 16 trademark and trade dress infringement, pursuant to 15 U.S.C. § 1117.

17 THIRD CLAIM FOR RELIEF

18 (Unfair Competition Under State Law)

19 **Cal. Bus. & Prof. Code §§ 17200 *et seq.* and California Common Law**

20 47. Sinh darella realleges and incorporates by reference the
 21 allegations in paragraphs 1 through 46, as if set forth fully herein.

22 48. Defendant's acts as detailed herein have impaired Sinh darella's
 23 goodwill, have created a likelihood of confusion, are likely to deceive consumers,
 24 and have otherwise adversely affected Sinh darella's business and reputation by
 25 Defendant's use of unfair, fraudulent, and unlawful business practices. These acts
 26 constitute unfair competition and unfair business practices under California
 27 Business and Professions Code §§ 17200 *et seq.* and California common law.
 28

1 accounting, costs, attorneys' fees and other damages and monetary relief, all
2 according to proof at trial.

3 **FIFTH CLAIM FOR RELIEF**

4 **(Constructive Trust)**

5 54. Sinhdarella realleges and incorporates by reference the
6 allegations in paragraphs 1 through 53, as if set forth fully herein.

7 55. Sinhdarella is entitled to all profits Defendant has derived from
8 infringement of Sinhdarella's rights pursuant to 15 U.S.C. § 1117(a), 15 U.S.C.
9 § 1125(c)(2), and the statutory and common law of the United States and State of
10 California.

11 56. Sinhdarella alleges on information and belief that Defendant
12 owns and possesses tangible real and personal property and assets consisting of or
13 obtained with profits from or obtained by Defendant's unlawful acts, as alleged
14 herein.

15 57. Defendant holds the above-mentioned tangible real and
16 personal property and assets as constructive trustee for the benefit of Sinhdarella,
17 in an amount to be proven at trial.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Sinhdarella prays for entry of a judgment ordering
20 and declaring:

21 1. That, preliminarily pending trial of this action and permanently
22 thereafter, Defendant and his agents, servants, employees, successors, licensees
23 and assignees, and all persons, firms, entities, partners, or corporations in active
24 concert or participation with Defendant, are preliminarily and thereafter
25 permanently enjoined from doing, threatening, or attempting to do or causing to be
26 done, either directly or indirectly, by any means, method or device, any of the
27 following acts:
28

1 (a) Directly or indirectly infringing, using, or displaying the
2 trademark THE BOILING CRAB® or Sinh darella's THE BOILING CRAB®
3 trade dress, or any mark or trade dress similar thereto, in any manner or for any
4 purpose, including, but not limited to, in advertising, promoting, producing,
5 distributing, selling, offering for sale, or giving away any services or products
6 which infringe, use, or display Sinh darella's THE BOILING CRAB® trademark or
7 the trade dress of Sinh darella's THE BOILING CRAB® restaurants, or any marks
8 or trade dress similar thereto;

9 (b) Using any term that is likely to be confused with
10 Sinh darella's THE BOILING CRAB® trademark;

11 (c) Using any trade dress likely to be confused with the trade
12 dress of Sinh darella's THE BOILING CRAB® restaurants, including the overall,
13 non-functional configuration of Sinh darella's THE BOILING CRAB® restaurants,
14 including, but not limited to, the menus, food items, color of the walls, the signs on
15 the walls, the hanging of fishing nets on the walls, affixing sculptures of red-
16 colored crustaceans on the walls, the configuration of the tables and chairs, and the
17 overall look-and-feel of the restaurant;

18 (d) Falsely representing, misleading, or deceiving consumers
19 into believing that services or products advertised, promoted, produced,
20 distributed, sold, or offered for sale by Defendant originate from Sinh darella or its
21 THE BOILING CRAB® restaurants, or are sponsored, approved, licensed by, or
22 associated with Sinh darella or its THE BOILING CRAB® restaurants, or that
23 Defendant or his services or products are in some way associated or affiliated with
24 Sinh darella or its THE BOILING CRAB® restaurants;

25 (e) Destroying, concealing, altering, or otherwise disposing
26 of any documents, electronically stored information, or other evidence that relates
27 or refers to the advertising, promotion, production, distribution, sale, or giving
28 away Defendant's products and services which infringe Sinh darella's THE

1 BOILING CRAB® trademark and trade dress, including, but not limited to, sales
2 journals, supplier journals, customer journals, ledgers, invoices, purchase orders,
3 inventory control documents, bank records, correspondence, and e-mail messages;

4 (f) Committing any other acts calculated to or that do
5 unfairly compete with Sinhdarella in any manner;

6 (g) Filing or prosecuting any trademark application for the
7 trademark THE BOILING CRAB® or any mark confusingly similar thereto;

8 (h) Filing or maintaining any business license, d/b/a, or
9 similar document using the trademark THE BOILING CRAB® or any mark
10 confusingly similar thereto; and

11 (i) Registering or using any trade name or domain name
12 containing or consisting of the trademark THE BOILING CRAB® or any mark
13 confusingly similar thereto;

14 2. That Defendant be required to account for all profits derived by
15 him from his trade, infringing conduct, unfair practices and competition, and for an
16 order of restitution of the entire amount of those profits, in amounts to be proven at
17 trial, to Sinhdarella;

18 3. That Defendant be required to turn over to be impounded
19 during the pendency of this action all goods and other materials in his possession,
20 custody, or control used or involved in the trademark and trade dress infringement
21 complained of herein, and to turn over for destruction all such goods and other
22 materials, or in the alternative that all such items be subject to seizure;

23 4. That Defendant be ordered to pay all of Sinhdarella's attorneys'
24 fees, costs, and disbursements incurred in this suit, in bringing this action for the
25 legal enforcement of its trademark and trade dress rights, and in connection with
26 all efforts to stop Defendant's trademark infringement, trade dress infringement,
27 and unfair competition;

28

1 5. That, in addition to being ordered to pay its profits attributable
2 to the infringing conduct complained of herein to Sinhdarella, Defendant also be
3 ordered to pay his infringing profits as monetary damages and reasonable royalties,
4 to be increased by the Court by such amount as the Court deems to be just, together
5 with Sinhdarella's damages, all of which, according to the circumstances of this
6 case, should be increased and trebled as provided by law, including 15 U.S.C. §
7 1117, and paid to Sinhdarella;

8 6. That Defendant be ordered to pay exemplary or punitive
9 damages to the extent available under, and according to, law;

10 7. That Defendant has willfully and deliberately committed acts of
11 trademark infringement, trade dress infringement, and unfair competition against
12 Sinhdarella;

13 8. That Defendant be ordered to pay interest according to law;

14 9. That Defendant be ordered to pay the costs of corrective
15 advertising; and

16 10. For all such other, further, and different relief that this Court
17 deems just and proper.

18
19 Dated: August 22, 2007

Respectfully submitted,

LATHAM & WATKINS

20
21
22 By



Michael W. De Vries

23
24 Attorneys for Plaintiff
SINHDARELLA, INC.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b) and Local Rule 3-6, Plaintiff Sinhdarella, Inc. hereby demands a trial by jury of any and all issues triable of right by a jury, including all issues so triable that are raised herein and all such issues that are hereafter raised in this action.

Dated: August 22, 2007

Respectfully submitted,

LATHAM & WATKINS

By 
Michael W. De Vries

Attorneys for Plaintiff
SINHDARELLA, INC.